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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,417	12/08/2004	Doris Reich	3152	2640
7590	03/05/2008		EXAMINER	
Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			RACHUBA, MAURINA T	
			ART UNIT	PAPER NUMBER
			3723	
			MAIL DATE	DELIVERY MODE
			03/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/517,417	<b>Applicant(s)</b> REICH ET AL.
	<b>Examiner</b> Maurina Rachuba	<b>Art Unit</b> 3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 December 2007.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1 and 3-11 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 3-11 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 08 December 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3, 4, 6, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 29 06 123. As set forth in the Office action mailed 13 December 2007, '123 discloses a similar apparatus, including the structure, but not the placement of the inlet mouth, in that '123 does not disclose that the inlet is below the dust chamber as now claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have positioned the inlet as claimed, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Regarding the inlet mouth positioned "close" to the rear delimiting wall of the chamber, the examiner considers the term "close", without further defining structural features, to be a relative term, and therefor the mouth as disclosed by '123 is "close" to the rear delimiting wall, see for example figure 10.
3. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 29 06 123, as applied to claims 1 and 4 above, and further in view of Rick et al, 5,925,172. '123 discloses that the exhaust opening extends partially over the cover and is formed of openings. '172, figure 3, teaches the use of a louvered grating extending over the entire cover of the filter housing exhaust opening. It would have been obvious to one of ordinary skill to have provided '123 with the louvered grating exhaust opening over the entire cover as taught by '172, column 6, lines 15-24, to allow maximum air

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flow and to direct the flow of air. Further, '123 does not disclose an elastic edge extending around the outside which rests against the housing and has an air-sealing function. '172 teaches that it is old and well known to provide an elastic edge **128** to a filter housing to provide an air-sealing function. It would have been obvious to one of ordinary skill to have provided '123 with the seal of '172 to ensure that particulates do not escape from the container, see column 6, lines 1-7.

4. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being obvious over DE 02 06 123 , as applied to claims 1 and 4 above, and further in view of Reich et al, 6,641,634.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under

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35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2). '123 does not disclose the housing provided with locking hooks, or that an end wall of the housing bounded by the hood is designed to rest against the machine in a form-locked manner. '634, in a similar apparatus, teaches providing hooks **29** to latch a dust container housing to a tool, so that an end wall bounded by the tool is designed to rest against the machine in a form-locked manner. It would have been obvious to one of ordinary skill to have provided '123 with the hooks and end wall as taught by '634, figure 3, to allow the container and tool to be integral, see column 4, lines 31-67.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1 and 3-11 have been considered but are moot in view of the new ground(s) of rejection. Applicant has overcome the rejections under 35 USC 102. Applicant argues that '123 does not disclose the inlet under the dust chamber. The examiner refers applicant to the rejection above. Applicant further argues that '123 does not disclose the inlet situated close to the rear delimiting wall of the chamber. "Close" is defined as: "being near in time, space, effect, or degree<sup>1</sup>". It is the examiner's position that without further defining structure, the inlet is "close" to the rear delimiting wall.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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<sup>1</sup> Merriam-Webster Online Dictionary copyright © 2005 by Merriam-Webster, Incorporated

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maurina Rachuba whose telephone number is 571 272 4493. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571 272 4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Rachuba/  
Primary Examiner, Art Unit 3723